



"THE COURT: The record should further indicate that the parties have submitted the deposition of the claimant, discovery deposition, to be considered for purposes of today's hearing. Correct, gentlemen?"

"MR. STUBBS: Yes, Judge."

"MR. PHALEN: Yes, for preliminary hearing purposes only."

(2) The Appeals Board agrees with the Administrative Law Judge and also finds it is more probably true than not true that claimant sustained personal injury by accident arising out of and in the course of her employment with the respondent during the period of December 4, 1995 through December 7, 1995, as alleged. Claimant testified her back began to hurt on or about December 4, 1995 when she straightened her back after stooping to perform her work. She also testified her back pain increased after December 4, 1995 and worsened to the point she was unable to work after December 7, 1995. After her symptoms did not improve, claimant sought medical treatment and asked respondent to provide a company doctor.

(3) The Appeals Board agrees with the Administrative Law Judge that claimant provided timely notice of accident. Claimant testified that she told her supervisor, Lisa Butts, on the day her back pain began that she hurt her back while working. Claimant's fiancé, Kevin L. Sharbutt, also testified that he discussed claimant's back injury with her supervisor on or about December 12, 1995 and that Ms. Butts acknowledged notice of accident in that conversation. Jeff Redden, claimant's fiancé's cousin, testified that he heard claimant tell Ms. Butts that she had hurt her back while working. It appears that conversation occurred either on December 4 or 5, 1995.

The Administrative Law Judge had the opportunity to observe claimant and her witnesses testify, along with respondent's witnesses Lisa Butts and Mary Ann Little. In awarding benefits, the Administrative Law Judge had to have found claimant to be truthful. In this instance, the Appeals Board gives some deference to the Administrative Law Judge's assessment of claimant's credibility and veracity.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Steven J. Howard dated May 28, 1996 should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1996.

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BOARD MEMBER

c: William L. Phalen, Pittsburg, KS  
Clifford K. Stubbs, Lenexa, KS  
Steven J. Howard, Administrative Law Judge

E. DIANE AKIN

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DOCKET NO. 208,798

Philip S. Harness, Director